

**UNITED STATES COURT OF APPEALS**

**August 3, 2005**

**TENTH CIRCUIT**

**PATRICK FISHER**  
Clerk

WALTER ALMON PAYTON,

Petitioner-Appellant,

v.

DAVID McKUNE, Warden, Lansing  
Correctional Facility,

Respondent-Appellee.

No. 05-3003

(03-CV-3460-CM)

(D. Kansas)

**ORDER**

Before **EBEL**, **McKAY**, and **HENRY**, Circuit Judges.

After examining Petitioner's brief and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

This is a *pro se* 28 U.S.C. § 2254 prisoner appeal. Petitioner was convicted of rape in Kansas state court. Petitioner's subsequent appeal to the Supreme Court of Kansas was denied and his conviction was upheld. Petitioner then filed a § 2254 petition for *habeas corpus* relief with the United States District Court for the District of Kansas. In that petition, Petitioner alleged constitutional error in his state court conviction.

The district court dismissed the petition as time barred under AEDPA's one-year statute of limitations. The district court also denied Petitioner's motion for reconsideration and his renewed motion for reconsideration. Petitioner now requests a certificate of appealability from this court. The issues he raises on appeal are identical to those brought before the district court.

The district court did not act on the issue of a certificate of appealability, and it is therefore denied pursuant to Fed. R. App. P. 22(b)(2). In order for this court to grant a certificate of appealability, Petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To do so, Petitioner must demonstrate "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal citations and quotations omitted). When a habeas petition is denied by the district court for procedural reasons, as is the case here, Petitioner must clear the added hurdle of showing "that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.*

We have carefully reviewed Petitioner's brief, the district court's disposition, and the record on appeal. Nothing in the facts, the record on appeal, or Petitioner's filing raises an issue which meets our standards for the grant of a

certificate of appealability. For substantially the same reasons as set forth by the district court in its December 2, 2004 Memorandum and Order, we cannot say that it is “debatable whether the district court was correct in its procedural ruling.”

*Id.*

We **DENY** Petitioner’s request for a certificate of appealability and **DISMISS** the appeal.

Entered for the Court

Monroe G. McKay  
Circuit Judge